

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST.NO.10752 OF 2007**

Salauddin Shaikh Masloddin & Ors. ...Appellants

vs.

Shaikh Kamruddin Yaqoob ...Respondent

Mr.N.R.Bubna for the Appellants
Ms Nasreen Ayubi for the Respondent

**CORAM: A.S.OKA, J.
DATE : DECEMBER 13, 2007.**

ORAL JUDGMENT:

1. Heard Advocate for the Appellants and the Advocate for the respondent. It is pointed out that when the impugned order dated 12th January 2007 was passed by the District Court, it was not brought to the notice of the District Court that the only opponent in the Civil Miscellaneous Application No.62/2003 had died on 11th October 2006. Therefore, the question is whether the impugned order is valid as the same has been passed against a dead person. The First Appeal is admitted on the aforesaid substantial question of law. Taken up for hearing by consent of the parties.

3. The learned counsel for the Respondent fairly states that the fact that the Respondent died on 11th October 2006 was not brought to the notice of the District Court. Therefore, she states that the order dated 12th January 2007 be quashed and set aside and the application be remanded to the District

Court to enable the Respondent herein to take appropriate steps for impleading appropriate parties as the opponents.

4. The application before the District Court arises out of a the proceeding for change report. The change report which was filed by the Respondent was accepted by the Assistant Charity Commissioner. An Appeal was preferred before the Joint Charity Commissioner. The said Appeal was allowed. By the impugned order, the order of the Joint Charity Commissioner has been set aside by the District Court.

5. The present appellants claim to be the affected parties Therefore, they will have to be impleaded as the party opponents.

5. Hence, I pass the following order :

i) Impugned Judgment and Order dated 12th January 2007 is quashed and set aside. Civil Miscellaneous Application No.62 of 2003 is restored to the file. It will be open for the Respondent to implead the appropriate parties as opponents to the said application. The present appellants shall be also impleaded as opponents to the said application.

ii) The appellants and the respondent are directed to appear

before the District Court on 21st January 2008 at 11.00 a.m.

- iii) Civil Miscellaneous Application No.62/2003 shall be decided afresh by the District Court as expeditiously as possible and preferably before the end of June 2008.
- iv) All contentions of the parties in the application are expressly kept open.
- v) Appeal is partly allowed in above terms with no order as to costs.
- vi) Parties and the concerned District Court to act upon an authenticated copy of this order.

JUDGE